

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

I. GENERAL PROCUREMENT POLICIES	2
A. Purpose and Interpretation.	2
B. Purchasing Agent Responsibility.	3
C. Department Responsibilities.	4
D. General Standards.....	4
E. Procurement Methods.	7
F. Vendor Operating Requirements.	14
G. Purchasing Specifications.....	14
H. Qualified Contractors List and Vendors List.....	15
II. CONTRACTS.....	16
A. Contracts.	16
B. Special Contracts.	16
C. Change Orders and Contract Amendments.....	17
III. PUBLIC WORKS	18
A. Prequalification and Bidder's Questionnaire.	18
B. Bid Thresholds.....	19
C. Bidding and Miscellaneous Requirements.....	20
D. Alternative Procurement Methods for Public Works.....	22
IV. GOODS	22
A. Procurement Methods and Thresholds.....	22
B. Miscellaneous Requirements for the Procurement of Goods.....	23
V. SERVICES.....	23
A. Procurement Methods and Thresholds.....	23
B. Specific Types of Service Contracts.	24
VI. PROTESTS.....	25
A. Generally.	25
B. Protest Procedures.....	25
VII. INFORMATION TECHNOLOGY	26
A. Designation.....	26
B. Cooperation.	27

C. Authorized to Request IT Purchases.	27
VIII. Federal Procurement.	27
A. Legal Compliance.	27
B. General Federal Requirements and Recommendations.	27
C. Federal Vendor Requirements.	29
D. Methods of Procurement.	30
APPENDIX A	31

I. GENERAL PROCUREMENT POLICIES

A. Purpose and Interpretation.

These procurement policies and procedures are intended to implement and supplement City Charter Sections 709 (Purchasing) and 710 (Public Works) and Chapter 39 of the City's Municipal Code (Procurement), and to ensure compliance with applicable laws. In the event of any conflict between these Procurement Policies and the Charter and/or Municipal Code, then the Charter and/or Municipal Code will take precedence.

1. Modifications to Procurement Policies. The Procurement Policies may be modified periodically by the Purchasing Agent, as defined in § 39.37 of the City's Municipal Code.

2. Interpretation. These Procurement Policies will not be interpreted to require the procurement of products that do not perform adequately for their intended use, exclude adequate competition, or are not available at a reasonable price in a reasonable period of time. Additionally, these Procurement Policies will not be construed as requiring the City or any vendor to take any action that conflicts with applicable laws.

3. Definitions. Unless the context specifically requires otherwise, the definitions set forth in § 39.37(A) of the Procurement Ordinance apply to these Procurement Policies, whether or not capitalized. Additional terms are defined below:

DIR means the California Department of Industrial Relations.

Federal Procurement Requirements means the uniform federal award procurement requirements set forth in 2 CFR §§ 200.318 – 200.326, as may

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

be amended from time to time, which apply to federally funded procurements, and any additional federal requirements that apply to a particular procurement.

FEMA means the Federal Emergency Management Agency.

IT means information technology.

IT Designee means the department or individual designated by the Purchasing Agent responsible for standardizing and controlling all purchases of IT equipment, including, but not limited to, data and telephone networks and desktop computers.

List means a Qualified Contractors List and/or a Vendors List, for purposes of Part I, Section H, *Qualified Contractors List and Vendors List*.

Procurement Ordinance means Chapter 39 (Procurement) of the City's Municipal Code.

Procurement Policies means the procurement policies and procedures set forth in this document.

RFP means a request for proposals transmitted to qualified vendors to seek a competitive proposal to provide services to the City.

RFQ means a request for qualifications transmitted to potentially qualified vendors to evaluate qualifications for providing required services.

Simplified Acquisition Threshold means the dollar amount below which the City, as a non-federal entity, may procure property or services subject to the Federal Procurement Requirements using the small purchase procedures, as set forth in 2 CFR § 200.88.

Vendor means a business entity or sole proprietor that may provide goods or services to the City.

B. Purchasing Agent Responsibility.

To perform the Purchasing Agent's functions efficiently and to assist the City's departments, the Purchasing Agent will:

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

1. Coordinate and manage the City's procurement of goods and services.
2. Ensure full and open competition on all purchases as required by laws or Procurement Policies, and make award recommendations to the appropriate authority as necessary.
3. Identify, evaluate, and utilize purchasing methods that best meet the needs of the City, subject to applicable laws.
4. Recommend revisions to Procurement Policies when necessary.

C. Department Responsibilities.

Each Department is responsible for facilitating prudent, efficient, and cost-effective purchases. To meet these responsibilities, Departments will:

1. Ensure staff is trained on the terminology and requirements set forth in these Procurement Policies.
2. Minimize urgent and sole source purchases, and provide written findings and documentation when such purchases may be necessary.
3. Avoid "splitting" orders or projects for the purpose of circumventing procurement requirements or authorization limits.
4. Anticipate requirements sufficiently in advance to allow adequate time to obtain goods or services, in accordance with best purchasing practices.
5. Maximize coordination of purchases into a lesser number of large transactions to take advantage of cost savings for bulk purchases of commonly used goods and services.

D. General Standards.

1. **General Procurement Standards.** All City procurements must be made in compliance with the Procurement Ordinance, applicable laws, funding source requirements (if any), and these Procurement Policies. City procurements which are subject to federal funding, in whole or in part, including FEMA disaster aid, must also comply with the applicable Federal Procurement Requirements, as defined above, and as further specified in Part VIII, *Federal Procurement*, below. (See 2 CFR § 200.317.)

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

(A) Full Competition. City personnel must discharge their duties impartially to ensure fair and open competition for City business by responsible vendors. (See 2 CFR § 200.319.) City personnel will treat all vendors equally and fairly, with equal information given to each vendor who participates in the procurement process. City personnel will ensure that all Vendors Lists and Qualified Contractors Lists are current and include enough qualified sources to ensure maximum open and free competition. City personnel may not place unreasonable restrictions on competition, including any of the following restrictions (per 2 CFR § 200.319):

- (1) Placing unreasonable requirements on vendors to qualify for the procurement;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between vendors or affiliates;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Non-compliance with sole source restrictions and “or equal” requirements, including Public Contract Code § 3400;
- (7) Precluding potential vendors from qualifying during the solicitation period; and
- (8) Any arbitrary action in the procurement process.

2. Standards of Conduct. All personnel engaged in the purchasing function will exercise good judgment in the use and stewardship of City resources, and all purchasing functions will be conducted with absolute integrity and objectivity. Purchases are subject to public scrutiny; employees will follow a strict rule of personal conduct that will not compromise the City in the conduct of its business. Any employee intentionally and/or repeatedly making purchases in a manner that circumvents, ignores, or fails to comply with these Procurement Policies will be subject to disciplinary action, in accordance with City Personnel procedures. No employee, officer, or agent of the City may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest,

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

as further specified in this Section.

(A) Conflict of Interest. A conflict of interest includes any circumstances under which the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of those parties, has a financial interest in or a tangible personal benefit from a vendor considered for a contract. No officer, employee, or agent of the City may solicit or accept gratuities, favors, or anything of monetary value from vendors or parties to subcontracts. Disciplinary actions, up to and including termination for cause, will apply to any violation of these conflict of interest standards, in accordance with City policy, and/or, as applicable, a collective bargaining agreement, employment contract, or contract for services. (See 2 CFR § 200.318(c)(1).)

(B) Prohibitions. City personnel may not violate laws pertaining to conflicts of interest, political contributions, or unlawful activities. A City employee may not participate in the vendor selection process if the employee has (1) a financial relationship, as set forth in Government Code § 87100 et seq., with the person or firm seeking a contract; or (2) a real or apparent conflict of interest under Government Code § 1090 et seq.

(C) Vendor Conflicts. A vendor that develops or drafts the specifications, requirements, statement of work, invitation for bids, RFQ, or RFP for a procurement must be excluded from competing for that procurement. (See 2 CFR § 200.319(a), and Govt. Code § 1090 et seq.)

3. Economical Approach. All procurements must be undertaken in a manner that will avoid acquisition of unnecessary or duplicative items, which may include consideration of consolidating or breaking out procurements, lease alternatives, and other appropriate analysis to determine the most economical approach, subject to the limits of applicable law, including prohibitions against bid-splitting. (See 2 CFR § 200.318(d), and Pub. Con. Code § 20163.)

4. Administration.

(A) Oversight. Department Directors must maintain oversight over procurements to ensure that vendors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. (See 2 CFR § 200.318(b).)

(B) Procurement Records. Records must be maintained for each

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

procurement of goods or services documenting the history of a procurement, including (1) records of the rationale for procurement method, (2) selection of contract type, (3) vendor selection or rejection, and (4) the basis for the contract price. (See 2 CFR § 200.318(i).)

(C) Contract Documentation. Vendors must provide all documentation required by a contract (e.g., insurance certificates and endorsements, licenses, permits) prior to providing goods or performing services under a contract.

5. Purchasing Authority and Limits. Authorized approvers of requisitions and contracts for goods and services will be limited as indicated below, or as modified by an employee's Delegation of Expenditure Authority form authorized by the Purchasing Agent or their designee:

- (A) \$1 to \$5,000 Staff as delegated by Department Director
- (B) \$1 to \$10,000 Department Director
- (C) \$1 to \$100,000 Directors of Public Works and Community Services
- (D) \$1 to \$100,000 Purchasing Agent
- (E) \$100,000 and above, City Council

E. Procurement Methods.

1. Petty Cash. Departments may request petty cash for use in purchasing small or immediately needed items, or for expenditures that would be impractical to process through the Purchase Order system as provided for in Policy No. 2.41, (Petty Cash).

2. Credit Cards.

(A) Under certain circumstances, use of a City credit card may be the most appropriate method for purchases.

(B) City credit cards will be distributed on an as-needed basis to staff at the discretion of the Department Director and approved by the Finance Director. Delegated spending authority will be consistent with spending limits outlined in an approved Delegation of Expenditure Authority form.

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

(C) City credit cards may be utilized for purchase of goods, and must not be used to contract for or purchase services, including Professional Services.

(D) All purchases by credit card will be shipped or delivered to a City address.

(E) All credit card purchases must be documented in the same fashion as regular purchases, including properly signed off packing/receiving slips, confirmation that goods have been received in good condition, and business justifications for the purchases.

(F) If sales tax has not been paid at the time of purchase, this must be noted so that Finance can ensure that sales/use tax is paid to the State.

(G) Use of the City credit card for personal purchases, cash advances, or to purchase alcohol is prohibited.

(H) Failure to comply with established procedures may result in discontinuance of use of the credit card by the employee or department, and may subject the employee to disciplinary action, in accordance with City Personnel procedures.

3. Purchase Requisitions. Departments will submit requests for goods or services to the Purchasing Agent using a standard Requisition Form. Authority for requisitions will be the same as indicated in Section D.5, *Purchasing Authority and Limits*, above.

4. Request for Quotes. If authorized or required by these Procurement Policies, a request for quotes may be used to procure goods. The request for quotes must comply with the following requirements.

(A) Request. The request for quotes must be made using a Request for Quotation form or alternate form approved by the Purchasing Agent.

(B) Contents of Request. The request for quotes must describe the required goods in sufficient detail to ensure fair comparisons (including, but not limited to, size, performance criteria, standards, shipping costs, time for delivery, and warranty requirements), describe how to obtain more detailed information, and state the time and manner for submitting quotes and any

required supporting documentation. The request will also describe required contract provisions or attach the required form of contract.

(C) *Issuance.* The request for quotes must be issued to vendors listed in the Vendors List, if established and applicable.

(D) *Minimum Number of Quotes.* Whenever possible, purchases will be based on the procurement of at least three quotes.

(E) *Form of Response.* Quotes must be in writing and may be submitted by mail, email, or fax, as specified in the request for quotes.

(F) *Award.* The Purchasing Agent will award the contract, if at all, based on the lowest responsive quote, factoring in shipping and handling costs, from a responsible vendor whose quote fulfills the intended purpose, quality, and delivery needs of the request, and subject to local preference, if applicable, as further specified in Part IV, Section B.3, *Local Preference*.

(G) *Records.* Written documentation of the issuance of a request for quotes, including identifying the vendors issued the request for quotes, must be provided to the Purchasing Agent. The Purchasing Agent will keep a record of all requests for quotes and quotes submitted in response to a request for a minimum period of one year after the submission of quotes, and such records will be made available for public inspection under the California Public Records Act, as amended from time to time..

5. RFP and/or RFQ. If authorized or required by these Procurement Policies, an RFP and/or RFQ may be used to competitively procure services. Generally, an RFP is best suited for defined projects and an RFQ is best suited for ongoing or on-call services. A combination of both an RFP and an RFQ may be used, in the form of either a combined, one-step procurement method, seeking both qualifications and proposals, or a two-step procurement method, by first issuing an RFQ followed by an RFP to qualified vendors. RFPs and/or RFQs must comply with the following requirements.

(A) *Procedures.* Unless required by laws, public notice of an RFP and/or RFQ is not required. An RFP and/or RFQ may be sent directly to vendors. The Purchasing Agent will determine the procedures applicable to an RFP and/or RFQ, including the basis for award (e.g. best value, etc.).

(B) *Contents.* Each RFP and/or RFQ must include a clear and

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

comprehensive description of the scope of services, and the applicable terms and conditions. The request must provide instructions for submission of a response and identify the required contents for a response, which should correspond with the stated evaluation criteria. The request should also attach a copy of the form of contract approved by the City Attorney that includes the applicable indemnity and insurance requirements. The RFP and/or RFQ must identify the evaluation criteria, which may include price and/or rates; experience, including experience on similar projects or providing similar services and record of performance on previous contracts; qualifications, including the character, integrity, reputation, judgment, experience, and efficiency of the firm, and personnel proposed to provide the services; the ability, capacity, and skill to perform the services; and/or the proposed approach to complete the services, etc. The RFP and/or RFQ may also identify the relative weight attached to each evaluation criterion.

(C) Proposal Submission and Evaluation. Sealed responses will be submitted to the Purchasing Agent by the date and time specified in the RFP and/or RFQ. Responses will be fairly and objectively evaluated based upon responsiveness to the RFP and/or RFQ and based on the criteria set forth in the RFP and/or RFQ. Evaluation may be conducted by a panel that includes individuals with relevant technical expertise. Interviews may be conducted in private to preserve competition.

(D) Public Review. Responses to an RFP and/or RFQ are not subject to disclosure under the California Public Records Act, based on the catchall exception set forth in Government Code § 6255, until the City has completed negotiations with vendors. Responses will be made available for public review no later than when the agenda is posted, subject to applicable exceptions under the California Public Records Act.

6. Informal Bidding. If authorized or required by these Procurement Policies, competitive procurement by informal bidding may be used to procure goods or services. Competitive procurement by informal bidding must comply with the following requirements. Additional requirements may apply to informal bidding for public works. (See Part III, *Public Works*.)

(A) Notice. At least ten days prior to the date the contract will be awarded, the City will mail or email a notice inviting bids to at least three qualified vendors, when possible, which may include vendors on the Vendors List or Qualified Contractors List. If fewer than three prospective vendors are known to exist, the notice inviting bids will be sent to all those

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

prospective vendors known to the City.

(B) Contents of Notice. The notice must describe the required goods or services, describe how to obtain more detailed information, and state the time and manner for submitting bids and any required supporting documentation. The request should also attach or reference the required form of contract, approved by the City Attorney.

(C) Bid Opening.

(1) Submittal. Bids must be submitted to the Purchasing Agent or his or her designee in the manner and at the time stated in the notice inviting bids. For contracts subject to prevailing wage requirements, the bidding instructions must require that the bidder's DIR registration number be submitted with the bid, and city staff will check online to confirm that the bidder is currently registered with the DIR before opening the bid. Bids that are submitted after the stated deadline for bid submission, or bids for which staff determines that the bidder lacks the required DIR registration, if required, will be returned unopened.

(2) Public Inspection of Bid Amounts. A tabulation of all bid amounts received will be open for public inspection, during regular business hours, at the department that issued the notice inviting bids, for a period of not less than five calendar days after the bid opening. Upon expiration of the five calendar days, the tabulation will be maintained in accordance with other public records and subject to the City's record retention policy.

(3) Irregularities. The City Council, or the Purchasing Agent, if authorized to approve the subject contract, may, in its sole discretion, waive minor or inconsequential irregularities in a bid.

(4) Rejection of Bids. Any and all bids may be rejected at the City's discretion. The Purchasing Agent will mail or email notice to each bidder to inform each bidder that all bids are rejected. After rejecting all bids, the City may: (a) abandon the purchase or project; (b) re-advertise the purchase or project; (c) modify and re-advertise the purchase or project; or (d) perform the work with City employees, if allowed under the City Charter and Municipal Code.

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

(5) Basis for Award. The contract will be awarded, if at all, to the responsible bidder that submits the lowest responsive bid.

(6) Tie Bids. In the event two or more bids are for the same total amount or unit price, and fitness, quality, and all other factors being equal, the order of preference will be determined by drawing lots, or some other objective selection method.

7. Formal Bidding. If authorized or required by these Procurement Policies, competitive procurement by formal bidding may be used to procure services. Competitive procurement by formal bidding must comply with the requirements set forth in Section E.6, *Informal Bidding*, above, except for the following;

(1) Sealed Envelope. Bids must be submitted to the Purchasing Agent or his or her designee in sealed envelopes. The sealed envelope must specify the bid request or project and indicate that it is a bid. Bids will be opened at the time and place stated in the notice inviting bids. For contracts subject to prevailing wage requirements, the bidding instructions must require that the bidder's DIR registration number be submitted with the bid, and city staff will check online to confirm that the bidder is currently registered with the DIR before opening the bid. Bids that are submitted after the stated deadline for bid submission, or bids for which staff determines that the bidder lacks the required DIR registration, if required, will be returned unopened.

(2) Notice. The notice inviting bids must be published once in a newspaper of general circulation in the City at least five days before the bid deadline and on the City's website at least ten days before the bid deadline. Additional requirements may apply to formal bidding for public works. (See Part III, *Public Works*.)

8. Alternative Procurement Procedures. The Purchasing Agent may approve alternative selection, evaluation, and award procedures for a specific procurement subject to the limitations of law, if available information demonstrates that a substantial cost savings, enhancement in quality or performance, or other public benefit will result from use of the alternative procurement method. The alternative procurement method will meet the purpose and goals of the Procurement Ordinance and will substantially promote the public interest in a manner that could not be achieved by complying with the competitive procurement methods otherwise available under the Procurement Ordinance. See Part III, Section D, *Alternative Procurement Methods for Public Works*, for additional limitations on the use of alternative procurement methods for public works.

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

9. Exceptions to Competitive Procurement.

(A) Sole Source. A purchase may be made or contract awarded without a competitive procurement process when there is only one reasonable and practicable source for the required goods or services because of the unique quality of the goods or services; availability; compatibility with existing city programs, equipment or systems; or fitness for a particular use, as further explained in § 39.41(A) of the Procurement Ordinance.

(B) City's Best Interest. If the Council determines that, due to the nature of the goods or services, (1) a competitive procurement process is not likely to serve the best interests of the city or to result in the lowest price, or (2) there is a less expensive alternative that will serve the city equally as well, the goods or services may be obtained without a competitive procurement process, as further explained in § 39.41(B) of the Procurement Ordinance.

(C) Emergencies. Upon determining that an emergency exists, the Council or the City Manager may dispense with otherwise applicable competitive procurement procedures to authorize a procurement necessary to address, avoid, or ameliorate the circumstances creating the emergency or the resulting damage or potential damage, as further explained in § 39.41(C) of the Procurement Ordinance.

(D) Urgent Purchases. The Purchasing Agent may authorize immediate purchases of goods or services up to \$30,000, without compliance with otherwise applicable competitive procurement procedures, that are required on an urgent basis based on unforeseen and unforeseeable circumstances, upon a determination that the time required for the applicable competitive procurement would outweigh the potential benefits under the specific circumstances, as further explained in § 39.41(D) of the Procurement Ordinance.

(E) Purchases Not Susceptible to Competitive Bidding Process. Under the circumstances set forth in § 39.41(E) of the Procurement Ordinance, procurements which are not readily adaptable to the open market and bidding process may be procured without a competitive procurement process.

(F) Miscellaneous. Use of a competitive procurement process may be

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

dispensed with if it would be impossible, impractical, or incongruous or when the amount involved is less than \$5,000, as set forth in § 39.41(F) of the Procurement Ordinance.

(G) Cooperative Purchase Contracts. When in the best interests of the City, the Purchasing Agent is authorized to join with other public jurisdictions in Cooperative Purchasing Contracts; buy directly from a vendor at a price established by competitive bidding by another public jurisdiction in substantial compliance with these Procurement Policies, even if the City has not joined with that public agency in a formal contract; and, purchase from the United States of America, any state, municipality or other public corporation, or agency, without following a competitive procurement process. Similarly, the Purchasing Agent is authorized to join with other public jurisdictions or non-governmental organizations in Public Works projects that have been competitively bid pursuant to the Eureka Municipal Code, this policy, or the Public Contract Code. See Part II, Section B.2 for more information on Cooperative Purchase Contracts.

F. Vendor Operating Requirements.

- 1. City Business License.** Any person doing business in the City must possess a current City of Eureka Business License.
- 2. Background Check.** Vendors and their respective subcontractors who meet any of the following criteria must obtain and successfully pass a California Department of Justice Live Scan Fingerprinting background check, and will be responsible for the costs thereof at the time of fingerprinting:

- (A) Work with children when performing on-site services
- (B) Access City computers

G. Purchasing Specifications.

- 1. Specifications and Requirements.** All procurement solicitations should incorporate a clear and accurate description of the technical requirements or functions of the goods or services to be procured. The description may include a statement of the qualitative nature of the material, product, or services to be procured and, when necessary, must set forth those minimum essential characteristics to which it must conform if it is to satisfy its intended use. However, such descriptions should not be drafted to unduly restrict competition among

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

qualified vendors. (See 2 CFR § 200.319(c).)

2. Use of Brand Names. Use of brand names in specifications are for the purpose of describing the standard of quality, performance, and characteristics that the City desires, and not intended to limit or restrict competition. If a brand name is incorporated into a specification, a minimum of two acceptable brands will be listed whenever possible and will be followed by the statement “or approved equal” unless the sole source policy applies.

3. Manufacturer Specifications. Use of specifications provided by a specific manufacturer should be avoided. However, if used, the name of the manufacturer, model number, etc., should be indicated. The bid document will clearly state that the use of the manufacturer’s specifications are for the sole purpose of establishing the level of quality desired. The Purchasing Agent will determine and approve any product submitted as an “or equal.”

4. Specific Brands for Equipment or Supplies. The Purchasing Agent may limit bidding to a specific product type or a brand name product when purchasing equipment or supplies required to be compatible with existing equipment or to perform complex or unique functions.

5. Specific Brands for Public Works. For public works projects, the Purchasing Agent is authorized to make a determination pursuant to § 3400(c) of the Public Contract Code that a particular material, product, thing, or service may be designated by brand or trade name in an invitation for bids or request for proposals for one of the permitted reasons provided in Public Contract Code § 3400(c).

H. Qualified Contractors List and Vendors List.

If the Purchasing Agent elects to establish a Qualified Contractors List and/or a Vendors List, the following will apply:

1. Classification. The List specifies what categories of goods or services the vendor is qualified for.

2. Criteria. Vendors seeking to be placed on the List will demonstrate that they are properly licensed, in compliance with applicable rules and regulations, and are qualified for a category of goods or services.

3. Annual Updates. The City will update the List annually.

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

4. Use in Informal or Formal Bidding. Any time the City procures goods or services using a competitive procurement process by informal or formal bidding, it may use the List, mailing or emailing a notice inviting bids to qualified vendors on the List, as specified in Sections E.6 and E.7, above, in addition to any other applicable requirements.

II. CONTRACTS

A. Contracts.

1. Contract Execution. City contracts will be consistent with the City Charter, the Procurement Ordinance, and applicable laws, and must be executed by the Purchasing Agent or other duly authorized officer or employee of the City in accordance with § 31.04 (Contracts, Conveyances, and Other Transactions), provided sufficient unencumbered funds exist. Each contract will be drafted or approved by the City Attorney as required by Charter Section 608 (City Attorney). Any contract made, or purported to be made, by the City that does not comply with these requirements will be void and of no force or effect.

2. Term. A contract should specify the applicable term, including dates for required performance, dates for phase completion, if applicable, and a project completion date. A contract for services may be made for a project in which completion of required work extends beyond one year; such a contract is not considered a multi-year contract in the context of these Procurement Policies. Pursuant to Charter Section 711 (Terms of Contracts), no contract for equipment, materials, or supplies will be made for a term in excess of one year.

3. Multi-Year Service Contracts. Multi-year contracts are encouraged for ongoing services with a defined scope of work, such as janitorial services, landscape maintenance services, services provided by attorneys and accountants, and printing services. The annual value of multi-year contracts and single year contracts with options to renew will be considered in obtaining the appropriate purchasing authority. Any renewal periods for such contracts will require a contract amendment, including proper signatures, executed prior to performance of the additional work.

B. Special Contracts.

1. Master Agreements. Master agreements with specific vendors may be established to provide: (i) ongoing or on-call services, or (ii) ongoing or recurrent

purchases of goods. A master agreement will provide for total compensation in the form of a not-to-exceed amount. A purchase order or task order issued pursuant to a master agreement will include a written description of the requested goods or scope of services and payment terms; a new contract for each purchase is unnecessary. Task orders generally should not exceed 10% of the original contract amount, unless authorized by the applicable purchasing authority. The purchasing authority and limits specified in Part I, Section D.5 apply to master agreements. Requirements such as insurance and indemnification may vary depending on the type of agreement. Funds will be encumbered in an adequate amount to complete the purchase; unused funds will be unencumbered following completion of the purchase.

2. Cooperative Purchase Contracts. When in the best interests of the City, the Purchasing Agent is authorized to enter into Cooperative Purchase Contracts, as further explained in Part I, Section E.9(G), *Cooperative Purchase Contracts*. A purchase order is required for any purchases made through a Cooperative Purchase Contract, subject to approval and dollar limitations.

C. Change Orders and Contract Amendments.

A substantial change to a purchase order or contract (i.e., pricing, terms and conditions, specifications and/or scope of work) must be documented as a change order or contract amendment.

1. Purchasing Authority. The purchasing authority set forth in Part I, Section D.5, *Purchasing Authority and Limits*, applies to change orders and contract amendments.

2. Limits. Change orders and contract amendments generally should not exceed 10% of the original contract amount, unless authorized by the applicable purchasing authority. A new scope of work and/or a new contract may be required when the change exceeds 10% of the original amount, as determined by the applicable purchasing authority or City Council. For additional requirements relating to change orders on public works projects, see Part III, Section C.5, *Change Orders*.

3. Exceptions. Generally, the contract should be fully inclusive of all costs, including taxes and shipping and handling. However, when taxes, shipping and/or handling cause a purchase to exceed the authorized amount, a change order or contract amendment is not required, and the purchasing limit may be exceeded in that circumstance.

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

III. PUBLIC WORKS

A. Prequalification and Bidder's Questionnaire.

1. Prequalification. For any public works contract subject to informal bidding or formal bidding, the Purchasing Agent may elect to require all bidders to prequalify, using prequalification procedures that substantially conform to the requirements of Public Contract Code § 20101, including, but not limited to, (i) required submission of a financial statement and standardized prequalification questionnaire that is generally consistent with the current guidelines and model forms provided by the DIR; (ii) use of a uniform system of rating prospective bidders based on objective criteria; and (iii) inclusion of an appeal process that enables a prospective bidder to dispute its rating prior to the bid deadline, as further specified in Public Contract Code § 20101. The Purchasing Agent will adopt and apply a uniform system of rating prospective bidders based on responses to the standard questionnaire submitted for a particular project using objective criteria. Bidders who prequalify for bidding on the project will be notified thereof in writing by the Purchasing Agent and will be invited to bid on the project, in the manner set forth in Part I, Section E.6 for informal bidding or Section E.7 for formal bidding, and in accordance with this Part III.

2. Bidder's Questionnaire. Alternatively, instead of prequalifying bidders in the manner set forth above, the invitation for bids issued for informal bidding or formal bidding may require submission of a signed bidder's questionnaire, which may be used to evaluate whether a bidder is responsible, as further specified in § 39.37(C) of the Procurement Ordinance. The bidder's questionnaire may elicit the following information:

- (A) The familiarity and experience of the prospective bidder with the particular type of public work or project designated in the questionnaire;
- (B) The sufficiency of personnel, equipment, materials and other facilities or resources of the prospective bidder to accomplish the work of the designated project within the time specified, and in conformance to the specifications thereof;
- (C) The qualification and capacity of the prospective bidder to obtain, if required, performance and payment bonds in the amount of 100% of the cost of the contract for the designated project from a bonding or security company licensed to do business in the State of California;

- (D) The financial condition of the prospective bidder;
- (E) The experience of the prospective bidder in performing public works contracts, generally, and public and private contracts for work similar to the designated project;
- (F) The safety record of the prospective bidder with respect to construction contracts;
- (G) The record of the prospective bidder within the five year period next preceding the date of submittal of the questionnaire regarding disputes, claims filed, submittal of disputes to mediation, arbitration, or other dispute-resolving procedures, and litigation pertaining to prior public works or private construction projects; and
- (H) Such other information relating to the ability, capacity and skill of the prospective bidder to perform the contract for the designated project, as determined by the Purchasing Agent.

B. Bid Thresholds.

1. Thresholds. The bid thresholds established pursuant to the Uniform Public Construction Cost Accounting Act and set forth in Public Contract Code § 22032, as amended from time to time, will apply to determine the applicable bidding requirements. The following bid threshold amounts will be deemed modified to align with future increases to the corresponding amounts set forth in Public Contract Code § 22032:

- (A) Public works projects that are estimated to cost up to and including the amount set forth in Public Contract Code § 22032(a), currently \$60,000, may be performed by (a) city employees, (b) force account, or (c) negotiated contract.
- (B) Public works projects that are estimated to cost more than the amount set forth in Public Contract Code § 22032(a) (currently \$60,000), but no more than the maximum amount set forth in Public Contract Code § 22032(b), currently \$200,000, may be awarded pursuant to informal bidding, as set forth in Part I, Section E.6, *Informal Bidding*, above, and this Part III.
- (C) Public works projects that are estimated to cost more than the

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

amount set forth in Public Contract Code § 22032(c), currently \$200,000, must be awarded pursuant to formal bidding, as set forth in Part I, Section E.7, *Formal Bidding*, above, and this Part III.

2. Master Agreements for Public Works. A Master Agreement for performing minor improvements and repairs on a task order basis, including but not limited to pothole, sidewalk, sewer lateral, or utility pole repairs, may be awarded subject to the same competitive procurement requirements that apply to any other public works contract.

C. Bidding and Miscellaneous Requirements.

1. Notice Inviting Bids. For public works projects subject to informal bidding or formal bidding, notice must be provided to prospective vendors in the manner specified in Part I, Sections E.6 and E.7, above, based on the applicable procurement method, except that, if the City chooses to prequalify contractors, the notice inviting bids will only be sent to the prequalified contractors. The notice inviting bids must be prepared using the form approved by the Purchasing Agent. For formal bids, the bid documents must require submission of bid security in the amount of 10% of the maximum bid price, as further specified in Section C.2, *Bid Security*, below.

2. Bid Security. Each formal bid must be accompanied by bid security in the amount of 10% of the maximum bid price (including additive alternates, if applicable), in the form of cash, a cashier's check, a certified check, or a bid bond executed by a corporate surety admitted in the State of California. Bidders are entitled to the return of bid security; provided that a successful bidder will forfeit its bid security upon bidder's refusal or failure to execute the contract within ten days after notice of award and submission of the contract to the bidder. The City may, on refusal or failure of the successful bidder to execute the contract, award the contract based on the next lowest responsive bid submitted by a responsible bidder.

3. Payment and Performance Bonds. For any public works contract over \$25,000, the successful bidder will be required to provide a payment bond and a performance bond, each for an amount equal to 100% of the contract price, as a condition to performing any work on the project. The bonds must be issued by a surety admitted in the State of California on bond forms approved by the Purchasing Agent.

4. Prevailing Wage Requirements. Public projects or maintenance projects

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

(excluding routine janitorial services) are subject to prevailing wage requirements set forth in Labor Code § 1720 et seq., including § 1771, unless exempt, as specified below. This includes any construction, alteration, demolition, installation, repair work, maintenance, carpet-laying, certain tree-removal work, and certain hauling and delivery of ready-mix concrete. For procurements subject to prevailing wage requirements, the procurement solicitation and contract documents must include information on prevailing wage requirements and compliance as specified in the Labor Code.

(A) *Prevailing Wages.* The payment of prevailing wages is required for public works projects or maintenance projects (excluding routine janitorial services), as set forth in Labor Code § 1720 et seq., including § 1771, unless exempt, as follows: Contracts for alteration, demolition, repair, or maintenance work for \$15,000 or less and construction contracts of \$25,000 or less are exempt from this requirement.

(B) *DIR Registration.* For each contract subject to prevailing wage requirements, the City may not accept a bid from or award a bid to any contractor or subcontractor that is not registered with the DIR, pursuant to Labor Code § 1771.1, unless exempt, as follows: Contracts for construction, alteration, demolition, or repair work for \$25,000 or less and maintenance contracts of \$15,000 or less are exempt from this requirement.

(C) *DIR Notification.* For contracts subject to DIR registration requirements, Department Directors must ensure that a PWC-100 form is filed online with the DIR within 30 days after the contract is awarded, but no later than the first day that workers are employed on the project. City personnel are encouraged to file the PWC-100 as soon as possible following award to avoid the penalties that may be imposed for late filing. (See Lab. Code § 1773.3.)

5. *Change Orders.* For purposes of complying with Charter Section 710 (Public Works), change orders affecting the scope of work, time requirements, cost, or other substantive provisions affecting the City's interest are deemed to be approved by the Council, provided the City Manager recommends the change order, and (1) the change order cost falls within the change order contingency previously approved for the contract, or (2) the change order cost does not exceed the Purchasing Agent's approval authority.

6. *Dispute Resolution.* Public works contracts must incorporate or reference the claim and dispute resolution provisions set forth in Public Contract Code § 9204

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

and § 20104 et seq., and claims arising from public works contracts must be addressed in accordance with the applicable provisions of the Public Contract Code.

D. Alternative Procurement Methods for Public Works.

1. Applicability. This Section D applies to the use of an alternative method for the procurement of public works projects in excess of \$1,000,000, subject to authorization by the Council and the limitations of laws. Alternative procurement methods may include design-build, design-build-operate, design-build-operate-maintain, design-build-operate-finance, design-build-operate-finance-maintain, construction manager at risk, lease-leaseback, a public-private partnership, construction manager/general contractor, or any other procurement methodology specifically approved by the Council and determined to be in the City's best interests.

2. Alternative Procurement Procedures. If the Council approves an alternative procurement method for a specific project, the City may use that alternative procurement method for the public works project. The Purchasing Agent is expressly authorized to consider award on the basis of "best value," which may be based on objective criteria that may include, but not be limited to, price, features, functions, life-cycle costs, experience, and past performance. For projects authorized by the Council to be procured via an alternative procurement method, the City may use an RFQ and/or RFP, as set forth in Part I, Section E.5, above.

IV. GOODS

A. Procurement Methods and Thresholds.

1. Estimated Value of \$10,000 or Less. Goods with an estimated value of \$10,000 or less may be procured through a negotiated written purchase order. The Purchasing Agent may negotiate with vendors on the Vendors List, if established.

2. Request for Quotes. Goods with an estimated value over \$10,000 and up to \$100,000 may be procured by a request for quotes, in accordance with Part I, Section E.4, *Request for Quotes*.

3. Competitive Procurement by Informal Bidding. Goods with an estimated value exceeding \$100,000 will be procured by informal bidding, in accordance with Part I, Section E.6, *Informal Bidding*. The contract will be awarded, if at all, based on the lowest responsive bid, factoring in shipping and handling costs, and subject

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

to local preference, if applicable, as further specified in Section B.3, below.

4. Master Agreement Purchases. A Master Agreement for ongoing or recurrent purchases of goods, may be awarded subject to the same competitive procurement requirements that apply to any other contract for goods.

B. Miscellaneous Requirements for the Procurement of Goods.

1. Term. As indicated in Part II, Section A.2, no contract for equipment, materials, or supplies will be made for a term in excess of one year.

2. Used Goods. Used equipment, materials, or supplies may be procured at the discretion of the Purchasing Agent or his or her designee, when in the best interest of the City.

3. Local Preference. Pursuant to Charter Section 709 (Purchasing), for materials, supplies, and equipment obtained pursuant to a competitive procurement process, a preference of up to 5% may be applied to vendors who regularly maintain a place of business and transact business in, or maintain an inventory of merchandise for sale in the City. A quote or bid from a Eureka vendor may be selected over a substantially equal quote or bid from a vendor based in another part of Humboldt County. To qualify for the local preference, vendors must submit proof of the address of their principal place of business and a copy of a current City of Eureka business license. The local preference will apply when written quotes or bids for materials, supplies, or equipment are solicited, but will not apply to purchases made in cooperation with other jurisdictions. Local preference will not be used when prohibited by applicable laws or funding agency conditions.

4. Reports. In the event that any goods are procured without substantial compliance with the procedures set forth in § 39.39 of the Procurement Ordinance, a full report of the circumstances will be submitted in writing by the Department Director to the Purchasing Agent, filed with the Council, and entered in the minutes of the Council for public inspection.

V. SERVICES

A. Procurement Methods and Thresholds.

The following procurement methods and thresholds apply to the procurement of all services, except public works services. (See Part III for requirements applicable to public works.)

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

1. **\$60,000 or Less.** Service contracts estimated to cost \$60,000 or less may be procured in a manner that is consistent with the objectives set forth in § 39.36(A) of the Procurement Ordinance, including assurance that purchases are at the lowest possible cost commensurate with the quality needed and serve the City's best interests.
2. **Over \$60,000 and up to \$200,000.** Service contracts estimated to cost over \$60,000 and up to \$200,000 may be procured from qualified vendors on the Vendors List, if established, in accordance with informal competitive procurement procedures. If no Vendors List is established or if there are insufficient qualified vendors for the required services on the Vendors List, the services will be procured by an RFP and/or RFQ, as set forth in Part I, Section E.5.
3. **Over \$200,000.** Service contracts estimated to cost in excess of \$200,000 will be procured by (1) RFP for service contracts based on a defined project, or (2) by RFQ for service contracts for ongoing or on-call services, or by a combination of both methods.
4. **Master Agreement for Services.** A Master Agreement for performing ongoing or on-call services, may be awarded subject to the same competitive procurement requirements that generally apply to contracts for the underlying services.

B. Specific Types of Service Contracts.

1. **Professional Services.** The Purchasing Agent will prescribe the procedures governing procurement of professional services. Contracts may be awarded through a competitive or negotiated process, as set forth below, based on solicitation of qualifications and/or proposals from at least three vendors (which may be waived at the discretion of the City Manager). Such procedures will have the express purpose of obtaining professional services of the highest quality together with the most cost-effective pricing.

(A) Architectural and Engineering Services. Notwithstanding any provision to the contrary in this Part V, all contracts for "architectural and engineering services," which is defined in Government Code § 4529.10 to include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services, will be procured pursuant to a fair, competitive selection process as specified in Government Code § 4529.12.

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

(B) Professional Services Provided by a Local Business. For professional service contracts other than for “architectural and engineering services,” as defined above, that will be (1) less than \$100,000, and (2) can be provided by a well-qualified local business, the Purchasing Agent, or designated Department may negotiate with a local business for the services subject to prior approval from the Council.

2. Grant-Funded Service Contracts. For projects involving grant agencies with specific requirements for procurement of consulting services, to the extent those requirements conflict or are inconsistent with these Procurement Policies, the more stringent provisions will control. Alternate procurement procedures that are more restrictive may be used to comply with conditions applicable to grant funding.

VI. PROTESTS

A. Generally. All protests, disputes, or claims, arising from a procurement will be addressed promptly in accordance with good administrative practice and sound business judgment, and in compliance with all applicable legal or contractual requirements. (See 2 CFR § 200.318(k).)

B. Protest Procedures. Protest procedures that substantially comply with the following requirements should be included in competitive procurement documents. Unless otherwise provided in the procurement documents, the following protest procedures will apply to a competitive procurement process.

1. Standing to Protest. Only a vendor who has actually submitted a response to a competitive procurement process is eligible to submit a protest.

2. Content of Protest. Protests must be submitted in writing and delivered either by mail, facsimile, e-mail, or hand delivery. The protest must include the name, mailing address, email address, telephone and facsimile numbers of the protesting vendor; identify the project or procurement being protested by name and number; and be signed by the person submitting the protest. The protest must also set forth a detailed statement of the factual and legal grounds for the protest and all information necessary to establish that the protesting vendor has standing to protest. Additionally, the protest must specifically request a ruling by the City and state the form of relief requested. The protest must include copies of all supporting documents forming the basis of the protest.

3. Filing Protest. Unless otherwise provided, protests must be filed at the

office of (a) the project manager or his/her designee, or (b) the City contracting officer responsible for the procurement. No vendor may submit more than one protest for a procurement. The protesting vendor must provide copies of the protest to all vendors that may be affected by the protest.

4. Time for Protest. Unless otherwise provided, protests must be filed by 5:00 p.m. on the fifth (5th) business day either (a) after the posting of the competitive procurement results, if applicable, or (b) after receiving a "Notice of Intent to Award" from the City with respect to the proposed award. Protests received after this time and date, unless otherwise provided in the procurement documents, will be rejected as untimely.

5. Protest Hearing. A protesting vendor is not entitled to a hearing. However, if the City chooses to proceed with an administrative hearing the City will provide the protesting vendor the opportunity to present its protest at a hearing before a City-designated administrative officer and all vendors who may be affected by the protest.

6. Copy of Protest to Awardee. Upon submission of a protest, the protesting vendor must also concurrently transmit the protest and all supporting documents to the protested vendor, if applicable, and any other vendor who has a reasonable prospect of receiving an award depending on the outcome of the protest.

7. Protest Evaluation. The Purchasing Agent or his or her designee, acting in consultation with the City Attorney, will investigate and make a determination on the protest consistent with applicable laws.

8. Decision on Protest. After evaluating the protest, the Purchasing Agent or his or her designee will issue a written decision sustaining or denying the protest. The City reserves the right to proceed with award of the contract notwithstanding a pending protest.

9. Non-Waiver. Nothing in this Section will be construed as a waiver of the City Council's right to reject all bids or to reject all responses to a competitive procurement.

VII. INFORMATION TECHNOLOGY

A. Designation. To keep costs under control and assure implemented technologies work together harmoniously and meet staff needs, the Purchasing Agent will designate a department or person to standardize and control all purchases of IT equipment and

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

software, including, but not limited to, data and telephone networks, cellular devices, printers and desktop computers.

B. Cooperation. With limited exceptions, the IT Designee will include funding to support all cross-department technologies in its annual budget, and will work cooperatively with the Purchasing Agent to identify technology vendors and purchasing methods. While the IT Designee may provide support for specific departmental technology needs, those needs may be funded through department budgets.

C. Authorized to Request IT Purchases. The IT Designee will maintain a list of those individuals or departments authorized by the Purchasing Agent to request technology purchases.

VIII. Federal Procurement.

A. Legal Compliance. Any procurement made pursuant to a federal award or subject to reimbursement, in whole or in part, with federal funds must comply with these Procurement Policies and laws, including the applicable Federal Procurement Requirements, such as 2 CFR § 200.322, Procurement of recovered materials; 2 CFR § 200.323, Contract cost and price; 2 CFR § 200.324, Federal awarding agency or pass-through entity review; 2 CFR § 200.325, Bonding requirements; and 2 CFR § 200.326, Contract provisions. In the event of any conflict between City, state, or federal requirements, the most stringent requirement must be used. (See 2 CFR § 200.318.) City personnel must comply with funding agency requests for review of technical specifications or procurement documents as provided in 2 CFR § 200.324.

B. General Federal Requirements and Recommendations.

1. Required Contract Provisions. Pursuant to 2 CFR § 200.326, contracts for federally-funded procurements must contain the applicable provisions described in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards. Sample Federal Contract Provisions are attached as **Appendix A**. Contracts over \$10,000 must address the City's ability to terminate for cause and for convenience, including the manner for effectuating termination, and the basis for final payment to the terminated vendor. In addition, contracts for federally-funded procurements that exceed the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies for vendor violation of contract terms, and provide for sanctions and penalties as appropriate, subject to the limitations of law.

2. Solid Waste Disposal Act. Federally-funded procurements must comply

with the Solid Waste Disposal Act, as further specified in 2 CFR § 200.322. This requirement must be included in the contract requirements.

3. Cost/Price Analysis. For federally-funded procurements in excess of the currently applicable Federal Simplified Acquisition Threshold, including contract modifications, a cost or price analysis must be performed, and must include making independent estimates before receiving bids or proposals. (See 2 CFR § 200.323.) Costs or prices based on estimated costs for federally-funded contracts are allowable only as provided in 2 CFR § 200.323.

4. Profit Negotiation. For a federal contract awarded without price competition, profit must be negotiated as a separate element of price. To establish fair and reasonable profit, consideration must be given to the complexity of the work, the vendor's risk, the vendor's investment, the amount of subcontracting, record of past performance, and industry profit rates, as further specified in 2 CFR § 200.323(b).

5. Excess or Surplus Property. When it will reduce project costs and is feasible, use of federal excess and surplus property is encouraged over purchasing new. (See 2 CFR § 200.318(f).)

6. Value Engineering. For larger federally-funded construction projects, a provision for value engineering may be added to the construction contract, subject to prior authorization from the City Engineer. A value engineering provision must include a clear procedure for submission, approval, and cost-sharing of savings, and approval as to form by the City Attorney. (See 2 CFR § 200.318(g).)

7. Geographical Preferences. Notwithstanding the provisions relating to local preference in § 39.39 of the Procurement Ordinance and local business in § 39.40(E) of the Procurement Ordinance, geographical preferences may not be used for federally-funded procurements, unless expressly authorized by the awarding agency. (See 2 CFR § 200.319(b).)

8. Time and Materials. A time and materials contract may not be used for a federally-funded procurement, unless the Department Director has determined that no other type of contract is suitable for the procurement, and provided the procurement complies with 2 CFR § 200.318(j). Similarly, a "cost plus" contract may not be used, as further specified in 2 CFR § 200.323.

9. Intergovernmental Contracts. Use of intergovernmental contracts is encouraged where appropriate. (See 2 CFR § 200.318(e).)

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

C. Federal Vendor Requirements.

1. Responsible Vendors. Contracts subject to Federal Procurement Requirements will only be awarded to responsible vendors possessing the ability to perform successfully under the terms and conditions of a proposed procurement, with consideration given to such matters as vendor integrity, compliance with public policy, record of past performance, and financial and technical resources. (See CFR § 200.318(h).) A vendor must also be “responsible” as determined under California law, including Public Contract Code § 1103, and defined in § 39.37 of the Procurement Ordinance.

2. Small and Minority Businesses. The City will take all necessary affirmative steps, including those identified in 2 CFR § 200.321(b), to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible for contracts subject to the Federal Procurement Requirements. The bid documents or RFP must require the vendor to take all necessary affirmative steps pursuant to 2 CFR § 200.321(b), when procuring subcontractors, to ensure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. (See Section 11, Small and Minority Business, in Appendix A, Sample Federal Contract Provisions.) In either case, the affirmative steps must include:

- (1) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible and subject to prohibitions on unlawful bid-splitting, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women’s business enterprises;
- (4) Establishing delivery schedules, where the requirements permit, which encourage participation by small and minority businesses and women’s business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

Business Development Agency of the Department of Commerce.

D. Methods of Procurement. Depending on the type and amount of goods or services, the City will use one of the below methods for federally-funded procurements, consistent with 2 CFR § 200.320.

1. Micro-purchases. The City may acquire supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold in 2 CFR § 200.67. A micro-purchase contract may be awarded without soliciting competitive quotes provided the price is reasonable, unless otherwise specified under the City's Procurement Policies. To the extent practicable, the City will distribute micro-purchases equitably among qualified suppliers. (See 2 CFR § 200.320(a).)

2. Small Purchase Procedures. The City may use simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold in 2 CFR § 200.88. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. (See 2 CFR § 200.320(b).)

3. Sealed Bids. The City may publicly solicit sealed bids to be opened in public and award a fixed price contract to the lowest responsible bidder, in the manner required for formal bidding pursuant to these Procurement Policies and the Procurement Ordinance, and in compliance with 2 CFR § 200.320(c)(1).

4. Competitive Proposals. The City may use this method when the conditions for use of sealed bids is not appropriate and more than one source submits an offer following a request for proposal. If the City uses this method, it must comply with the requirements of 2 CFR § 200.320(d), in addition to any other applicable City or state requirements, including, the requirements set forth in Part V, Section B.1(A), *Architectural and Engineering Services*, above.

5. Noncompetitive Proposals. The City may solicit a proposal from only one source when (1) the item is available only from a single source, (2) the public exigency or emergency for the requirement will not permit a delay resulting from a competitive procurement process, (3) the federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the City, or (4) competition is determined to be inadequate after solicitation of a number of sources. The procurement must comply with the requirements set forth in 2 CFR § 200.320(f).

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

APPENDIX A

SAMPLE FEDERAL CONTRACT PROVISIONS

Note: For contracts subject to federal funding, in whole or in part, including contracts that may be subject to emergency funds from FEMA, the following provisions should be copied and pasted into the contract or contract documents. See special instructions in highlighted angle brackets <...> and delete instructions from final version. The term "Contractor" may be replaced with "Consultant" or "Vendor" if applicable. Consult the representative for the funding agency and/or the City Attorney's Office regarding applicability and use of these contract provisions.

Federally Funded Projects. This Project is funded in whole or in part by federal funds and subject to the following federal requirements under the terms of the funding agreement(s) between City and the federal agency or agencies providing federal funds, which are fully incorporated by this reference and made part of the Contract Documents. Copies of any funding agreement between City and a funding agency will be made available upon request.

1. Equal Opportunity. If this is a public works contract, during the performance of this Contract, the Contractor agrees as follows:

(A) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(B) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(C) The Contractor will not discharge or in any other manner discriminate against

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision will not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(D) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the Contractor's commitments under this section, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

(E) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the United States Secretary of Labor.

(F) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the United States Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(G) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the United States Secretary of Labor, or as otherwise provided by law.

(H) The Contractor will include the portion of the sentence immediately preceding paragraph (A) and the provisions of paragraphs (A) through (H) in every

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

subcontract or purchase order unless exempted by rules, regulations, or orders of the United States Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the City or funding agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City or funding agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Davis-Bacon Act. If this is a public works contract, Contractor will pay wages to laborers and mechanics, not less than once a week, and at a rate not less than the current federal prevailing wages specified in the Davis-Bacon Act Wage Determination attached hereto and incorporated herein. By entering into this Contract, Contractor accepts the attached Wage Determination.

<The current Davis-Bacon Act Wage Determination, which may be accessed at <https://www.wdol.gov/dba.aspx> must be printed and included with the Contract Documents.>

3. Copeland "Anti-Kickback" Act. If this is a public works contract, Contractor will comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 CFR Part 3 as may be applicable, which are incorporated by reference into this Contract. Contractor and subcontractors must insert this requirement into subcontracts of any tier. Contractor is responsible for compliance with these requirements by each subcontractor of any tier.

4. Contract Work Hours and Safety Standards Act. In addition to the California state law requirements, Contractor and each subcontractor must comply with the requirements of the federal Contract Work Hours and Safety Standards Act, as set forth in 40 U.S.C. 3701-3708, as supplemented by the regulations set forth in 29 CFR Part 5, as may be amended from time to time, which are fully incorporated herein, including:

(A) No Contractor or subcontractor will require or permit any laborer or mechanic performing Work for the Project to work in excess of 40 hours in a work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours during that work week.

(B) If Contractor or a subcontractor violates this requirement, the Contractor and any responsible subcontractor will be liable for the unpaid wages. In addition, the

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

Contractor and subcontractor will be liable to the United States for liquidated damages. The liquidated damages will be computed with respect to each individual worker as specified under federal law.

(C) Contractor and subcontractors must insert this requirement into subcontracts of any tier. Contractor is responsible for compliance with these requirements by each Subcontractor of any tier.

5. Rights to Inventions. If the federal funding for this Contract meets the definition of “funding agreement” under 37 CFR section 401.2(a) and constitutes an agreement between the City and a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency, will apply to this Contract and are fully incorporated into the Contract Documents by this reference.

6. Clean Air Act. If the Contract is for an amount in excess of \$150,000, Contractor and each Subcontractor must comply with the requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401-7671q), which are fully incorporated into the Contract Documents by this reference, including requirements for reporting violations to the awarding agency and the applicable Regional Office for the Environmental Protection Agency. Contractor and subcontractors must insert this requirement into subcontracts of any tier in excess of \$150,000.

7. Federal Water Pollution Control Act. If the Contract is for an amount in excess of \$150,000, the requirements of the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387) apply to this Contract and are fully incorporated into the Contract Documents by this reference, including requirements for reporting violations to the awarding agency and the applicable Regional Office for the Environmental Protection Agency requirements for reporting violations. Contractor and subcontractors must insert this requirement into subcontracts of any tier in excess of \$150,000.

8. Suspension and Debarment. Contractor is required to verify that neither it, nor its principals, as defined at 2 CFR section 180.995, or its affiliates, as defined at 2 CFR section 180.905, are excluded or disqualified, as defined at 2 CFR sections 180.935 and 180.940. Contractor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, and must include a provision requiring compliance with these regulations in any subcontract of any tier. If it is later determined that the Contractor did not comply with the applicable subparts, the Federal Government may pursue available remedies,

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

including, but not limited to, suspension and/or debarment. By submitting a bid and entering into this Contract, Contractor agrees to comply with these requirements.

9. Byrd Anti-Lobbying Amendment. If the Contract is for an amount in excess of \$100,000, Contractor must comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) and file the certification provided at 44 CFR Part 18, Appendix A, and any disclosures, with the applicable federal agency. Each tier certifies to the tier above that it will not and has not used federal-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier will also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures will be forwarded from tier to tier up to the recipient.

10. Procurement of Recovered Materials. The requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962, apply to this Contract and are fully incorporated into the Contract Documents by this reference. For individual purchases of \$10,000 or more, Contractor will make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (A) competitively within the Contract schedule, (B) in conformance with Contract performance requirements, or (C) at a reasonable price. Information on this requirement, including a list of EPA-designated items, is available at the EPA's Comprehensive Procurement Guidelines website: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

11. Small and Minority Businesses. The Contractor will take all necessary affirmative steps, including those identified in 2 CFR § 200.321(b), to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible for subcontractors. These affirmative steps for subcontractor procurement must include:

(A) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(B) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(C) Dividing total requirements, when economically feasible and subject to prohibitions on unlawful bid-splitting, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business

CITY OF EUREKA

Category: Finance

POLICIES & PROCEDURES

Subject: Procurement Policy

Date Adopted: March 3, 2020

File 2.00

Updated: September 15, 2020

Number

enterprises;

(D) Establishing delivery schedules, where the requirements permit, which encourages participation by small and minority businesses and women's business enterprises; and

(E) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

<The above provision on Small and Minority Businesses, should also be added to the RFP or bid documents, as applicable.>